

## REMARKS

Applicants thank the Examiner for consideration of the present application. Applicants have carefully reviewed the Office Action dated January 26, 2010 (hereinafter “the Office Action”). Claims 1-48 are believed to be pending in this application. Each of claims 1-48 stands rejected in the Office Action. Claims 1, 2, 9, 12, 17, 18, 28, and 33-48 have been amended. Reconsideration of each of the rejected claims in light of the remarks below is respectfully requested.

### CLAIM REJECTIONS UNDER 35 U.S.C. § 112

Each of claims 1-48 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants have amended independent claims 1, 17, and 33 to clarify the claimed invention in view of each of the Office Action’s questions regarding those claims. Additionally, each of claims 2, 9, 12, 18, 34, and 44 have been amended to clarify the claimed invention in view of each of the Office Action’s questions regarding those claims. Applicants believe those amendments overcome the Section 112 rejections of claims 1-48.

### CLAIM REJECTIONS UNDER 35 U.S.C. § 101

Each of claims 17-48 stands rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Specifically, the Office Action found these claims to be directed to a signal directly or indirectly. Each of claims 17-32 has been amended to recite an “a non-transitive, machine accessible medium.” A non-transitive, machine accessible medium is a structural element. Additionally, each of claims 33-48 have been amended to positively claim structural elements of the system configured to execute the claimed steps. As such, Applicants believe these amendments overcome the Section 101 rejections of claims 17-48.

### 35 U.S.C. § 103(a) REJECTIONS

Each of claims 1-48 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Cyran (US 7,149,636) in view of Dabell (US 6,621,862). Applicants respectfully traverse these rejections as improper because the Office Action has failed to properly determine the scope and content of Cyran. For at least this reasons, withdrawal of the rejection under 35 U.S.C. § 103(a) of claims 1-48 is respectfully requested

#### I. INDEPENDENT CLAIMS 1, 17, and 33 – Cyran

The rejection of independent claims 1, 17, and 33 under 35 U.S.C. § 103(a) is improper because the Office Action has failed to perform the factual inquiry as required under *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). In *KSR*, the United States Supreme Court clarified the test for obviousness. This decision has been codified for use by patent examiners throughout MPEP 2100. The Supreme Court in *KSR* reaffirmed that the question of obviousness must be resolved on the basis of the factual inquiries identified in its *Graham* decision. The first of such factual inquiries is a determination of the scope and content of the prior art. In this regard, the Office Action has not properly evaluated the scope and content of Cyran and, as such, the rejection of claims 1, 17, and 33 under 35 U.S.C. § 103(a) is improper.

In support of the Section 103(a) rejection of claims 1, 17, and 33, the Office Action asserts that Cyran teaches “receiving a request from an execution unit to at least one of start and stop performance monitoring operation” and directs Applicants to Col. 2, lines 31-34 of Cyran for such teaching. First, Applicants note that Cyran fails to disclose a system having multiple execution units. Rather, the system of Cyran appears to utilize a single execution unit

(e.g., DSP 1010), although multiple power measurement devices may be used. As such, Cyran fails to disclose “receiving a request from a execution unit of the multiple execution units to start or stop performance monitoring operation of the execution unit,” as recited in amended claims 1, 17, and 33.

The Office Action also asserts that Cyran teaches “maintaining a correct sequence of requests to start and stop performance monitoring operation” and directs Applicants to Col. 6, lines 65-66. However, this section of Cyran simply teaches that the number of NOPs inserted into the measured embedded application is based on the calling sequence. Nothing in this section of Cyran or any other section identified by Applicants teaches the maintaining of a correct sequence of requests. In particular, no section of Cyran is believed to teach “maintaining a correct sequence of requests to start and stop performance monitoring operation by ensuring each stop request corresponds to and follows a corresponding start request for the same execution unit,” as recited in amended claims 1, 17, and 33. Applicants note that the Office Action asserts that Col. 4, lines 21-22 of Cyran teach such an ensuring section; however, this section of Cyran is simply discloses that the Oscilloscope 1012 “receives signals to start and stop power measurement,” but does not suggest such signals are received or, more particularly, maintained in any particular order. Further, that section of Cyran clearly fails to disclose ensuring that each stop request corresponds to and follows a corresponding start request. Cyran simply fails to disclose such ensuring or verification step.

Further, the Office Action asserts that Cyran teaches “allocating a request to start performance monitoring operation” and directs Applicants to Col. 7, lines 10-11. The Office Action appears to be interpreting the recompiling and re-linking of the target system as an allocation of a request. Applicants respectfully disagree. However, in order to further expedite

prosecution, Applicants have amended these claims to recite “allocating a request to start performance monitoring operation based on the correct sequence of requests.” Cyran fails to disclose that such recompiling or re-linking is “based on the correct sequence of requests.” Rather, there is no relation between the recompiling and the correct sequence of requests. The application is simply recompiled after it has been altered as described in Cyran.

The Office Action also asserts that Cyran discloses “determining an active mode of performance monitoring operation” and directs Applicants to Col. 7, lines 17-18. However, although the performance monitoring of Cyran may be occurring in “real-time,” Cyran fails to disclose the particular step of “determining” whether performance monitoring is occurring as claimed. That is, nowhere in Cyran is it disclosed that a determination is made as to whether performance monitoring operation is or is not occurring.

For at least the reasons provided above, the Office Action has failed to properly evaluate the scope and content of Cyran. Accordingly, the Office Action has failed to establish a *prima facie* basis for obviousness and the Section 103(a) rejection of independent claims 1, 17, and 33 should be withdrawn. Further, Applicants submit that the amendments to claims 1, 17, and 33 overcome the present rejections of those claims. Accordingly, claims 1, 17, and 33 are believed to be in condition for allowance and such action is respectfully requested.

## II. INDEPENDENT CLAIMS 1, 17, and 33 – Dabell

The Office Action has not properly evaluated the scope and content of Dabell as required under 35 U.S.C. § 103(a). In support of the Section 103(a) rejection of claims 1, 17, and 33, the Office Action asserts that Dabell teaches “performing arbitration to acquire exclusive execution for one of a plurality of request initiators” and directs Applicants to Col. 5, lines 16-

22. While this section of Dabell appears to teach determining a “winning” request from multiple requests, Dabell fails to teach “performing arbitration to acquire exclusive execution for one of the multiple execution units based on predetermined criteria and in response to multiple requests to start and stop performance monitoring being received substantially simultaneously,” as recited in amended claims 1, 17, and 33. First, Dabell fails to teach that such arbitration is for “exclusive execution for one of the multiple execution units.” Rather, the arbitration of Dabell is used to determine which input signals are to be sampled as described in Col. 7, ll. 27-33 of Dabell. Additionally, Dabell fails to disclose that such arbitration is in response to multiple requests being received substantially simultaneously.

Additionally, the Office Action asserts that Dabell teaches “determining a number of allocated requests to start performance monitoring operation” and directs Applicants to Col. 5, ll. 18-19, 21-22. In this regard, the Office Action appears to be equating the determination of a coefficient number associated with a request to the claimed determination step. However, claims 1, 17, and 33 have been amended to recite “determining a total number of allocated requests to start performance monitoring operation.” Applicants have found no section of Dabell wherein the total number of requests is determined.

For at least the reasons provided above, the Office Action has failed to properly evaluate the scope and content of Dabell. Accordingly, the Office Action has failed to establish a *prima facie* basis for obviousness and the Section 103(a) rejection of independent claims 1, 17, and 33 should be withdrawn. Further, Applicants submit that the amendments to claims 1, 17, and 33 overcome the present rejections of those claims. Accordingly, claims 1, 17, and 33 are believed to be in condition for allowance and such action is respectfully requested.

### III. DEPENDENT CLAIMS 2-16, 18-32, and 33-48

Each of dependent claims 2-16, 18-32, and 33-48 depend from independent claim 1, 17, and 33, respectively. As such, the rejections of 2-16, 18-32, and 33-48 should be withdrawn for the reasons hereinbefore discussed in regard to the independent claims 1, 17, and 33. In light of the reasons for withdrawal of the present rejection of claims 1, 17, and 33, any arguments specific to claims 2-16, 18-32, and 33-48 are held in abeyance without prejudice or admission to any assertion made by the Examiner in order to expedite prosecution.

### CONCLUSION

In view of the foregoing, it is submitted that this application is in a condition for allowance. Action to that end is hereby solicited. If there are any questions or comments that would speed prosecution of this application, the Examiner is invited to call the undersigned at (317) 261-7959.

It is respectfully requested that this paper be considered as a petition for a two-month extension of time extending the deadline of this response to June 26, 2010. The Commissioner is hereby authorized to charge the fee of \$490.00 for this two-month extension of

time and any shortages of fees, and credit any overpayment of fees, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 with reference to file 45631-211092.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Glen Kellett", is written over a horizontal line.

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